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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Rulemaking to Amend Parts 1, 2, 21, and 25 )  
of the Commission's Rules to Redesignate )  
the 27.5 - 29.5 GHz Frequency Band, to )  
Reallocate the 29.5 - 30.0 GHz Frequency )  
Band, to Establish Rules and Policies for )  
Local Multipoint Distribution Service and )  
for Fixed Satellite Services )

CC Docket No. 92-297

PETITION FOR RECONSIDERATION OR CLARIFICATION

Hughes Communications Galaxy, Inc. ("HCG") hereby respectfully requests that the Commission reconsider or clarify its Third Report and Order, FCC 97-378 (released October 15, 1997) in this proceeding to the limited extent set forth below.

HCG applauds the Commission's Third Report and Order in this matter, which provides a well-developed framework for licensing satellite systems in the Ka band. The Commission's decision will pave the way toward the prompt initiation of satellite services in the Ka band, which HCG has been pioneering since it first applied for the Spaceway system in 1993. However, there are three elements of the Commission's decision with respect to Ka band satellite service rules that warrant reconsideration and/or clarification. First, the Commission should clarify the rule that it has adopted with respect to implementation milestone schedules to specify that neither NGSO nor GSO licensees are required to commence construction before the *unconditional* grant of their respective licenses. Second, the Commission must specify in detail

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the extent to which GSO licensees will have to modify their international operations in order to comply with deviations from the 28 GHz band plan that are the result of certain preexisting U.S. government coordination agreements. Third, the Commission should act on the request of HCG for authority to use certain parts of the Ka band for international operations, as the Commission previously indicated it would do in the Third Report and Order.

1. Clarification of Milestone Requirements.

In Section 25.145(f) of the Commission's rules, a new requirement has been adopted specifying the system implementation milestones that both GSO and NGSO Ka band licensees are required to meet. At paragraph 55 of the Third Report and Order, the Commission recognized that the current unavailability of inter-satellite service link frequencies for both GSO and NGSO licensees would prevent those licensees from proceeding beyond the initial phases of system development. Thus, the Commission indicated that it would not impose any system implementation milestones on Ka band satellite licensee, such as HCG, who are awaiting specific inter-satellite spectrum assignments.<sup>1</sup> In other words, the current conditionality of the authorizations awarded to these licensees mandated the deferral of system implementation milestones at this time.

The text of Section 25.145(f), however, does not fully reflect this policy determination. While the rule provides that an NGSO licensee need not commence construction

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<sup>1</sup> For this same reason, the Commission has declined to impose any system implementation milestones on the HCG Spaceway system until the Commission grants a license for specific inter-satellite link spectrum. See *Hughes Communications Galaxy*, DA 97-971 (released May 9, 1997), para. 29.

until one year after the *unconditional* grant of its authorization, the rule does not symmetrically provide that a GSO licensee's construction milestone schedule commences on the unconditional grant of its license. In order to avoid creating an unintended discrepancy between the treatment of NGSO and GSO satellite licensees, Section 25.145(f) should be corrected to read as follows (additional words are indicated in italics):

(f) Implementation Milestone Schedule. Each GSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first satellite within one year of *the unconditional grant of its authorization*, to begin construction of the remainder within two years of *that grant*, to launch at least one satellite into each of its assigned orbital locations within five years of *that grant*, and to launch the remainder of its satellites by the date required by the International Telecommunications Union to assure international recognition and protection of those satellites. Each NGSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first two satellites within one year on the unconditional grant of its authorization, and complete construction of those first two satellites within four years of that grant. Construction of the remaining authorized operating satellites in the constellation must begin within three years of the initial authorization, and the entire authorized system must be operational within six years.

## 2. International Deviations from 28 GHz Band Plan.

In the Third Report and Order, the Commission adopted a requirement that U.S. satellite licensees operate in accordance with the 28 GHz band plan throughout the world, to the extent that band plan relates to satellite system spectrum sharing. In other words, the inter-satellite system priority scheme adopted in the 28 GHz band plan applies to U.S. satellite licensees with respect to their international operations. Due to the existence of some international coordination or consultation agreements that were adopted before the 28 GHz band plan was adopted in July 1996, the Commission indicated that certain rare deviations from this

rule would apply with respect to certain geographic areas in foreign countries.<sup>2</sup> Implicit in this statement is the requirement that U.S. satellite licensees will be required to conform their international operations to take into account these deviations from the band plan.

HCG respectfully requests that the Commission clarify this requirement by providing detailed information about the precise nature of these international deviations from the band plan and the extent to which satellite licensees may be required to modify their systems to comply with these rare deviations from the 28 GHz band plan. Without this information, a licensee cannot be expected to finalize its system design and commence construction, as it cannot know the extent of the modifications that the Commission may propose.<sup>3</sup> Moreover, this requirement must be clarified because it is unconstitutionally vague about the conduct that the

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<sup>2</sup> Third Report and Order at para. 69.

<sup>3</sup> The 29.25-29.5 GHz band is intended to be used on a global basis by U.S.-licensed GSO FSS and NGSO MSS systems pursuant to the requirements of Section 25.258 of the Commission's Rules. *See* Third Report and Order at para. 41; *see also* First Report and Order and Fourth Notice of Proposed Rulemaking, CC Docket 92-297, FCC 96-311 (released July 22, 1996), para. 72-74. The Iridium MSS system is not permitted to use this part of the band because its system is not designed to share with the GSO FSS systems licensed in this part of the band. At a status conference with the GSO industry on April 7, 1997, Commission staff indicated that an exception to this rule would be needed to account for an existing coordination arrangement with Japan to accommodate the Iridium satellite system. Representatives of the GSO industry indicated that any such exception would need to be narrowly circumscribed and that they would need to understand the details of that arrangement in order to be able to conform their operations. Commission staff have declined to provide any of these details to HCG, but HCG has been informed that these details are known to Iridium, the potential beneficiary of this exception.

Commission will require of satellite licensees, such as HCG, who are subject to this requirement.<sup>4</sup>

For these reasons, HCG respectfully requests that the Commission modify its Third Report and Order in order to specifically delineate the specific deviations from the 28 GHz band plan with which U.S. satellite licensees must comply.

### 3. International Spectrum Authorization.

Finally, Hughes respectfully requests that the Commission reconsider this decision to the extent that the Commission has not addressed the international spectrum needs of GSO licensees, like Spaceway, which the Commission indicated that it would address in this decision when it issued the Spaceway license in May 1997.<sup>5</sup> Specifically, HCG has requested the authority to use, on an international basis, the 17.7-20.2 GHz and 27.5-30.0 GHz bands for downlinks and uplinks from and to the Spaceway system. Pursuant to the Commission's 28 GHz

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<sup>4</sup> See *Freeman United Coal Mining Company v. Federal Mine Safety and Health Review Commission and Secretary of Labor*, 108 F.3d 358, 362 (D.C. Cir. 1997) ("In order to satisfy constitutional due process requirements, regulations must be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit.") Consistent with due process and fundamental fairness requirements, nor may the Commission impose a requirement that benefits one licensee at the expense of other licensees when only the beneficiary of the rule knows the requirements.

HCG is directly affected by this unconstitutionally vague requirement as HCG's Spaceway license is explicitly made subject to the service rules adopted in the Third Report and Order. See Third Report and Order at para. 37.

<sup>5</sup> See *Hughes Communications Galaxy*, DA 97-971 (released May 9, 1997).

band plan, all of that spectrum, with the exception of the 18.8-19.7 and 28.6-29.25 GHz portions, is available on a primary basis for use by GSO FSS satellite systems, such as Spaceway.

When the Commission issued the Spaceway license, the Commission had not yet resolved the inter-satellite system priority rules established in the Third Report and Order with respect to the international operations of U.S. satellite licensees. Thus, the Commission indicated that issues related to HCG's requested frequencies for international operations would be deferred and addressed in the 28 GHz band satellite service rules that ultimately were adopted in the Third Report and Order, and that the Spaceway license was explicitly subject to those service rules. Although the Commission has now made clear the rules under which GSO FSS systems like Spaceway may use the 17.7-18.8 GHz, 19.7-20.2 GHz, 27.5-28.6, and 29.25-30.0 GHz bands on a primary basis, it has not yet formally acted on HCG's request to use those bands for international operations. In order to preserve its rights with respect to this issue, HCG therefore respectfully requests that the Commission clarify that the Spaceway license covers the right to use these bands for international operations at the orbital locations that have been assigned for Spaceway.

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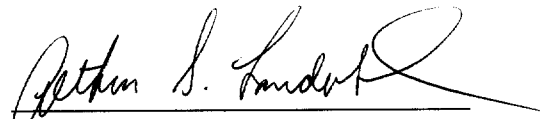
For the reasons set forth above, HCG respectfully requests that the Commission reconsider and/or clarify its Third Report and Order in this proceeding in order to (i) confirm that neither NGSO nor GSO licensees are required to comply with construction milestones before the *unconditional* grant of their respective licenses, (ii) specify in detail the extent to which GSO licensees will have to modify their international operations in order to comply with deviations

from the 28 GHz band plan that are the result of preexisting U.S. government coordination agreements, and (iii) confirm that HCG's Spaceway system is authorized to conduct international operations across the full bandwidth at Ka band that is available for GSO FSS systems on a primary basis.

Respectfully submitted,

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